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***Congress May Change the Estate Tax – What Should I Do Now?*****By Richard S. Franklin**

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Congress is proposing modifications to the gift, estate and generation-skipping transfer taxes. The House of Representatives would double the estate tax exclusion to \$11.2 million per person and repeal the estate tax beginning in 2025.<sup>1</sup> The Senate would double the estate tax exclusion to \$11.2 million per person<sup>2</sup> but without repealing the tax. Under either approach, a married couple could protect \$22.4 million from federal estate taxes.<sup>3</sup> Increasing the exclusion amount reduces the percentage of families subject to the estate tax from .02% to .01%.

What should you do if one or more of these changes occur? The answer to that question partly rests on your goals with respect to your estate.

For example, I believe that accumulated wealth can be used productively as a tool by descendants and other inheritors in support of reaching their full potential. To this end, I encourage families to be thoughtfully engaged in preserving family wealth. A family establishing this goal would focus on minimizing all risks that impact the movement of its wealth from generation to generation.

Last year at about this time, in my Client Alert entitled [Trump the Estate Tax](#), I suggested that moving assets into irrevocable trusts for tax and non-tax benefits is the best way to ensure that family wealth is both preserved over the long-term and protected from many of the associated risks to the capital pool, including estate taxes. For many reasons, the possibility of estate tax repeal is not a sufficient reason to abandon the strategy. However, I suggested creatively using any Congressional change that relaxes the gift tax to more quickly and efficiently transfer assets into such protected trusts.

The core point is that it's imprudent to entrust the security of family wealth to Congressional action or inaction on the estate tax. The current systemic fractures and intellectual drift in the political class causes such entrustment to be even more ill-advised. You might even view the government itself as a growing risk to the capital pool.

Let me use some imagery to make my point. I want you to imagine one of the greatest cathedrals of Europe, the Santa Maria del Fiore – the Duomo – in Florence. The cathedral's foundation is immense, the walls at its base are many feet wide.<sup>4</sup> Laying the foundation was a necessary prerequisite for building the inspiring structure above ground. When visiting this magnificent cathedral, the above-ground part demands your attention. The marble exterior, vast open spaces, the frescos, and the dome reaching to the heavens have been inspiring people for hundreds of years. These elements are the

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<sup>1</sup> H.R. 1 — 115th Congress (2017-2018), § 1602. This draft legislation would also repeal the generation-skipping transfer tax starting January 1, 2025. The gift tax would remain in place with an exclusion of \$11.2 million (as adjusted for inflation) and a top rate of 35% beginning in 2025.

<sup>2</sup> Senate version of H.R. 1 § 11061. However, the increased exclusion amount would revert back to the lower amount allowed under current law after December 31, 2025.

<sup>3</sup> The emphasis is on “federal” estate taxes. Whether the various states with separate estate taxes will increase or decrease their respective exemptions is completely unknown at this point in time.

<sup>4</sup> To give you an idea, the walls at the base of the cathedral's dome are 13 feet wide. *See generally*, W.D. Montalbano, [Piazza, Duomo Work : In Florence, It's Politics vs. Preservation](#) (LA Times, January 21, 1988).

flourishes, and by analogy to Dr. Abraham Maslow's chart of human development, they represent the higher levels of functioning – i.e., the art, beauty, and transcendence of reaching one's full potential. The part of the cathedral that is not so visible - the foundation - is analogous to the base layers of Dr. Maslow's chart, which contains the physiological needs of food, shelter and safety. Just like the cathedral's foundation sets the base for the magnificent above-ground portion, if the foundational level of Dr. Maslow's chart are not achieved, the individual cannot adequately focus on flourishing and reaching his or her full potential. To connect the imagery back to inheritance, preserving family wealth will help the family member spend less time on rebuilding the foundation and more time on the flourishes that may lead to self-actualization.<sup>5</sup>

Those building the foundation of the Duomo likely struggled to do so and, similarly, many individuals struggle with satisfying the base layers in their individual lives. The Duomo's foundation has been supporting the enormous weight above it since it was constructed. Similarly, a wealthy family might build a framework that supports and satisfies the base layers for its future descendants for centuries to come. Thereafter, in the case of the Duomo or the family, the focus is on flourishing and reaching full potential!

Therefore, given the possible changes that Congress may enact, should you pause in your efforts to preserve your family's wealth or in building a foundation for your family to flourish in the future? No and no! Don't be distracted from your long-term goal. If Congress makes it easier to build that foundation, then of course, by all means, use the relaxed legislation to your family's advantage. However, don't base your plan on anticipated favorable changes by Congress or on the expectation that a future Congress will keep such favorable changes in place.

If you have any questions about the possible estate tax changes and their impact upon your estate planning or otherwise, please call one of our lawyers.

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<sup>5</sup> For a more expansive discussion of my thoughts regarding the preservation of family wealth, see my [Family Wealth Series](#).